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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/764,818  | 01/26/2004  | Patricia A. Brown    | 108328.00170<br>(AVSI-0033)     | 8276                   |
| 25555 7590 02/23/2007<br>JACKSON WALKER LLP<br>901 MAIN STREET<br>SUITE 6000<br>DALLAS, TX 75202-3797 |             |                      | EXAMINER<br>SCHNIZER, RICHARD A |                        |
|   |             |                      | ART UNIT<br>1635                | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>02/23/2007         | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/764,818

Applicant(s)

BROWN ET AL.

Examiner

Richard Schnizer, Ph. D.

Art Unit

1635

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See attached.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Art Unit: 1635

Item 3.

The amendment will not be entered because the limitations “wherein the constant current electrical pulse is maintained under a threshold to allow a user to reduce cell heating and create less cell death” require further search and consideration. Also, it is unclear what are the metes and bounds of “corresponding to SEQ ID NO:1”, or “corresponds to SEQ ID NO:6”, because it is unclear what sequences are considered to “correspond” and what sequences are not.

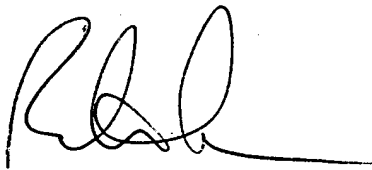
Item 5.

After further consideration, the rejection of claims 1-4, 7-9, 11, 15-20, 2, 23, 26-28, 30, 34-45, 47, 48, and 52-57 under 35 USC 112, first paragraph for lack of adequate written description of the genus of synthetic muscle specific promoters is withdrawn. A search of the prior art indicates that a variety of muscle specific promoters comprising known enhancers and transcription factor binding sites, in addition to the MEF-1, MEF-2, TEF-1, and alpha actin SRF sites disclosed in the specification) as well as appropriate spacing between these elements, was known prior to the date the invention was filed. Accordingly, one of skill in the art at the time of the invention would have believed that Applicant was aware of these enhancers and binding sites and knew how to assemble them to make synthetic promoters. Thus Applicant was in possession of the genus of synthetic muscle specific promoters at the time the invention was filed

Art Unit: 1635

Item 11.

Applicant's arguments regarding the Simon reference are unpersuasive because they are based on an amendment that was not entered.

A handwritten signature in black ink, appearing to be 'R. Schnizer', with a long horizontal line extending to the right.

**RICHARD SCHNIZER, PH.D.**  
**PRIMARY EXAMINER**